

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**In re:**

**Keith J Schlabach  
Lindi Jo Schlabach**

**Debtor(s).**

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**Case No.: 09-62768  
Chapter 13  
Judge Russ Kendig**

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**MOTION OF CITIMORTGAGE, INC. FOR RELIEF FROM STAY FOR REAL  
PROPERTY LOCATED AT 10345 EAST CAMINO TESOTE, TUCSON, AZ 85749**

CitiMortgage, Inc. (the "Creditor") moves this Court, under 11 U.S.C. § 361, 362, 363 and other sections of the Bankruptcy Reform Act of 1978, as amended (the "Bankruptcy Code") and under Rules 4001, 9013, 9014 and other rules of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") for an Order conditioning, modifying or dissolving the automatic stay imposed by 11 U.S.C. § 362 of the Bankruptcy Code. In support of this Motion, the Creditor states:

**MEMORANDUM IN SUPPORT**

1. The Court has jurisdiction over this matter under 28 U.S.C. § 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2). The venue of this case and this Motion is proper under 28 U.S.C. §§ 1408 and 1409.
2. On February 21, 2007, Keith J Schlabach ("Debtor") obtained a loan from Credit Suisse Financial Corporation in the amount of \$376,000.00. Such loan was evidenced by a Promissory Note dated February 21, 2007 (the "Note"), a copy of which is attached as Exhibit A.

3. **To secure payment of the Note and performance of the other terms contained in it, Debtor executed a Mortgage dated February 21, 2007 (the "Mortgage"). The Mortgage granted a lien on the real property (the "Property") owned by the Debtor, located at 10345 East Camino Tesote, Tucson, AZ 85749 and more fully described in the Mortgage. Lindi Jo Schlabach ("Debtor") filed Chapter 13 Bankruptcy on July 8, 2009.**
4. The lien created by the Mortgage was duly perfected by the filing of the Mortgage in the office of the Pima County Recorder on February 26, 2007. A copy of the Mortgage is attached as Exhibit B. The lien is the first lien on the property.
5. **The Note was transferred as follows:**
  - a. **from Credit Suisse Financial Corporation to \_\_\_\_\_. The transfer is evidenced by the allonge attached to this Motion as Exhibit A. Because the allonge is in blank and Creditor is in possession of the original Note, Creditor is entitled to enforce the instrument.**
6. **The Mortgage was transferred as follows:**
  - a. **from Mortgage Electronic Registration Systems, Inc. ("MERS") Solely As Nominee For Credit Suisse Financial Corporation to CitiMortgage, Inc., dated July 22, 2009. The transfer is evidenced by the document attached to this Motion as Exhibit C.**
7. The value of the Property is \$254,610.00. This valuation is based on the Auditor's tax record which is attached as Exhibit D.
8. As of the date of this Motion, there is currently due and owing on the Note the outstanding balance of \$375,980.00, plus interest accruing thereon at the rate of 7.125% per annum from August 1, 2008.
9. Other parties known to have an interest in the Property are as follows:
  - a. Lindi Jo Schlabach has a potential dower interest in the Property;

- b. the Pima County Treasurer;
- c. Specialized Loan Servicing LLC is believed to be the holder of a 2nd mortgage on the Property with an approximate payoff of \$69,989.00 per Debtor's Schedule D.

Attached as Exhibit E is Debtor's Schedule D.

10. The Creditor is entitled to relief from the automatic stay under 11 U.S.C. § 362(d)(1) and/or 362(d)(2) for these reason(s):
  - a. Debtor has no equity in the Property and the Property is not needed by the Debtor for its reorganization. Creditor believes that the Property has a value of \$254,610.00. Including the Movant's lien, there are liens in an aggregate amount of \$445,969 on the Property.
  - b. Debtor/Obligor has failed to provide adequate protection for the lien held by the Creditor for the reasons set forth below.
  - c. Debtor/Obligor has failed to make periodic payments to Creditor since the commencement of this bankruptcy case, which unpaid payments are in the aggregate amount of \$11,719.95 through December 14, 2009, **plus any other payments that may come due after the motion is filed but prior to the hearing date.**
  - d. **Debtor has failed to make payments or only made partial payments for the following months: August 2009, September 2009, October 2009, November 2009, and December 2009.**
  - e. **Debtor intends to surrender the Property located at 10345 East Camino Tesote, Tucson, AZ 85749 according to the Chapter 13 Plan filed.**
11. Creditor has completed the worksheet attached as Exhibit F.
12. This Motion conforms to the standard form adopted in this District except as follows:

For clarification purposes, all references in the Motion to Security Agreement have been changed to Mortgage, and Collateral to Property. Paragraph 5 has been added to clarify that the note and mortgage were transferred by separate documents. Paragraph 10 (c) includes a sentence stating the Motion includes any payments that come due after the

Motion is filed but before the hearing date. Paragraph 10 (e) has been added stating  
Debtor intends to surrender the Property.

WHEREFORE, Creditor prays for an Order from the Court granting Creditor relief from the automatic stay of 11 U.S.C. § 362 of the Bankruptcy Code to permit Creditor to proceed under law and for such other and further relief to which the Creditor may be entitled.

Respectfully submitted,

/s/ Stacey A. O'Stafy

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Attorneys for Creditor

**CERTIFICATE OF SERVICE**

I, Stacey A. O'Stafy, hereby certify that the foregoing Motion for Relief from Stay was electronically transmitted on or about December 14, 2009 via the Court's CM/ECF system to the following who are listed on the court's Electronic Mail Notice List:

Office of U.S. Trustee  
Northern District of Ohio  
Howard Metzenbaum U.S. Courthouse  
Party of Interest  
201 Superior Avenue  
Cleveland, OH 44114

John R. Bates  
Attorney for Keith J Schlabach and Lindi Jo Schlabach  
436 Fair Avenue NW  
New Philadelphia, OH 44663-1904  
batesfirm@gmail.com

Toby L. Rosen  
Charter One Bank Building  
400 W. Tuscarawas St., Fourth Floor  
Canton, OH 44702  
jbryan@chapter13canton.com

/s/ Stacey A. O'Stafy  
Stacey A. O'Stafy

The below listed parties were served via regular U.S. Mail, postage prepaid on December 14, 2009:

Keith J Schlabach  
Lindi Jo Schlabach  
3955 SR 93 NW  
Sugarcreek, OH 44681

Pima County Assessor's Office  
115 N Church Ave  
Tucson, AZ 85701

Keith J Schlabach  
Lindi Jo Schlabach  
10345 East Camino Tesote  
Tucson, AZ 85749

Specialized Loan Servicing LLC  
PO Box 105219  
Atlanta, GA 30348

/s/ Stacey A. O'Stafy  
Stacey A. O'Stafy